THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.6011 OF 2007

Date: 26-10-2007

Between:

V.Malla Reddy … Petitioner

And

Vijaya Bank,
Ameerpet Branch, Hyderabad,
Rep.by its Branch Manager … Respondents

O R D E R;-

Heard the counsel.

2. The writ petition is filed for a writ of Mandamus to declare the action of the respondent bank in proposing to conduct auction of the property of the petitioner mentioned at Sl.No.1 of the sale/auction notification issued in Praja Shakti Telugu Daily Newspaper on 26.3.2007 without considering the representation submitted by the petitioner on 13.3.2007 for settling the loan account under One Time Settlement Scheme as arbitrary, illegal, improper, unjust and consequently direct the respondent bank to consider the case of the petitioner for settlement of his loan account under One Time Settlement Scheme and to grant such other reliefs.

3. It is stated in the affidavit filed in support of the writ petition that the writ petitioner obtained a house loan from the respondent bank to the tune of Rs.9,80,000/- for the purpose of purchasing a residential Flat bearing No.102, Ramya Enclave, H.No.7-1-307/14/F/56, Jaiprakash Nagar, B.K.Guda, Hyderabad and created equitable mortgage of the said residential flat in the month of May, 2004 vide Loan Account No.ML 240017 payable at the rate of Rs.9,000/- per month for a period of 15 years. Thereafter, the petitioner paid an amount of Rs.10,00,000/- to the respondent-bank. Further it is stated that while the matter stood thus the petitioner suddenly fell ill and he could not attend to his business as a result of which he sustained huge loss in his business, due to which, he committed default in paying the monthly instalments. In this regard, the petitioner approached the respondent bank and brought to their notice about his illness and requested them to grant some time so as to enable him to pay the

arrears of loan instalments and further requested them not to take any coercive steps in the matter. Surprisingly they have issued a sale notification under securitisation act without following the procedure as contemplated in the act. It is also stated that thereafter the petitioner procured the necessary amounts from his friends and relatives and approached the respondent bank and submitted an application on 13.3.2007 with a request to consider his case under One Time Settlement Scheme and expressed his readiness to pay the same in lumpsum. It is also stated that the respondent having received the said application promised him to consider his case after consultation with their superior officers and further stated that they have already got issued a sale/auction notification in Praja Shakti Telugu Daily on 26.2.2007. The petitioner submitted that the sale/auction notification issued in the Praja Shakti Newspaper is not having a wide circulation and as such he is not aware of the said sale notification and he came to know about the same through the respondent only when he went to submit his application dated 13.3.2007 and the respondent further assured that they will not conduct the auction of my house property. Thereafter he made several visits to the respondent bank, but there is no proper response to his visits. While the matters stood thus, to his utter surprise and dismay, the petitioner came to know that the respondent keeping his application pending are proposing to conduct the auction of his property in pursuance of the auction notification dated 26.2.2007 on 26.3.2007. The petitioner submit that immediately he rushed to the respondent and questioned about their illegal acts to proceed with the conduct of auction of his house property, then the respondent bank officials in a reluctant manner gave evasive replies. The petitioner submitted that when he is ready and wiling to pay the loan amount in lumpsum under One Time Settlement Scheme, the respondents instead of considering his request proposing to conduct auction of his property is wholly illegal, arbitrary, without jurisdiction. It is pertinent to mention that the respondent with a malafide intention to

knock away his property for a meager consideration hatched a plan and without considering his representation are proposing to conduct auction of his property. He submitted that at this stage if the respondent is allowed to proceed further with the sale of his property, manifest injustice would be caused to him and he would be deprived of his legitimate right over his property.

4. In the counter-affidavit filed by the respondent it is stated that the writ petition itself is not maintainable at all in view of the fact the petitioner herein had questioned and challenged proceedings initiated by the respondent bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 including sale of Secured asset and if at all he has got any grievance, the only remedy that is available to the writ petitioner is to file a second appeal before the Hon'ble Debts Recovery Tribunal and hence, the writ petition is liable to be dismissed in-limini. It is stated that the petitioner, who intended to purchase a residential flat has approached this respondent bank for financial assistance and submitted a loan application dated 06.5.2004. Considering his request, this respondent bank sanctioned a loan facility of Rs.9,80,000/- on 08.5.2004 and the same was availed by the petitioner under Housing Loan Account No.ML240017 on 14.5.2004. For the due security of repayment of the loan facility, the petitioner executed the following documents:

a) Demand promissory note dated 14.5.2004.

b) Letter of undertaking dated 14.5.2004.

c) Articles of agreement dated 14.5.2004.

ii) It is stated that the said loan amount was guaranteed by one Sri I.Prabhakar Reddy, S/o I.James R/o 8-3-228/219, Rahamathnagar, Hyderabad, Andhra Pradesh by way of executing a letter of guarantee dated 14.5.2004 in favour of this respondent bank.

iii) It is stated that the writ petitioner has created an equitable

mortgage on the property viz., all that residential flat admeasuring 925 sq.ft. on first floor bearing Flat No.102 in the complex known as “Ramya Enclave” together with undiided share in the land admeasuring 25 Sq.yards out of 174 Sq.yards in the premises bearing Municipal H.No.7-1-307/14/F/56 situated at Jaiprakash Nagar, Bahloolkhanguda, Hyderabad, Andhra Pradesh in favour of this respondent bank by way of depositing original title deed ie. Sale deed dated 14.5.2004 bearing registered document No.1137 of 2004 in Book-I with the office of the Sub-Registrar, Khairthabad, Hyderabad and executed a Memorandum dated 17.5.2004 duly confirming the deposit of title deed and other documents by him with this respondent bank.

iv) It is stated that as per the agreed terms and conditions, the petitioner obligated and liable to repay the said loan amount of Rs.9,80,000/- together with interest @ 8.25% per annum in monthly instalments of Rs.9702/- each numbering to 180 instalments. Upon availing the loan facility, the petitioner chosen to pay only Rs.29,810/- towards instalments for repayment of loan facility. The petitioner has subsequently issued a cheque for Rs.9,702/- which was returned unpaid on 12.2.2005. However, in pursuant to issue of several notices on 04.4.2005, 19.9.2005 and 7.10.2005, the petitioner has paid only Rs.10,100/- on 07.10.2005, which includes said Rs.29,810/-. Thereafter, the petitioner again failed to repay the loan amounts as agreed and finally the said account was categorized as Non-performing asset on 30.9.2005. As on the date of NPA, further total loan recalled, he fell in arrears of Rs.10,82,000/-.

v) It is stated that due to non-payment of monthly instalments, the loan account was categorized as non-performing asset and total due amount in the loan account is Rs.10,82,000/- as on 30.9.2005 and the bank has no other way except to recall the loan and this respondent bank following due procedure as contemplated under

Section 13(2) of Securitization and reconstruction of Financial Assets and Enforcement of security Interest Act, 2002 issued a demand notice dated 12.11.2005 to the borrower viz., the writ petitioner requiring him to pay due amount of Rs.10,82,000/- as on 30.9.2005 within 60 days from the date of receipt of the same. However, the borrower has not complied with said notice and failed to pay the demanded amount and he has also not commenced payment of his monthly instalment.

vi) It is stated that since the borrower has not complied with the notice, the bank has several notices dated 08.1.2006, 09.3.2006 and 29.5.2006 to the petitioner and finally filed Criminal Miscellaneous Petition No.5128 of 2006 on the file of Hon'ble Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad for taking possession of the secured asset ie. Residential Flat admeasuring 925 sq.ft. on first floor bearing Flat No.102 in the complex known as "Ramya Enclave" together with undivided share in the land admeasuring 25 sq.yards out of 174 sq.yards in the premises bearing Municipal H.No.7-1-307/14/F/56 and the Hon'ble court appointed Sri M.Mallikarjuna, Advocate Commissioner on 08.8.2006. In pursuance of the same, as per Rule 8(i), possession of the secured asset was taken over with the assistance of Advocate Commissioner and issued a notice dated 21.8.2006 thereof.

vii) It is stated that the respondent bank issued auction/sale notification dated 26.2.2007 notifying the general public regarding an open auction scheduled on 26.3.2007 in respect of said property, on which, an equitable mortgage was created by the petitioner by way of depositing original title deed and other documents with this respondent-bank.

viii) It is stated that the petitioner has sent a registered letter dated 13.3.2007 which was sent through registered post on 15.3.2007 and the same was acknowledged by this bank on 16.3.2007,

wherein It was stated that the petitioner paid instalments up to 2005 and he could not pay the monthly instalments in time due to his ill-health. However, he has got huge amount by way of acquiring money by way of sale of his agricultural lands in village, he wants to repay the entire house loan by way of one time settlement. However the applicant either not shown any insterest nor turned up personally to the bank for liquidation of loan amounts inspite of repeated telephonic requests and no one time settlement proposal was accepted by the respondent bank as alleged by the petitioner. Further his statement that he has paid instalments up to 2005 is false and in fact he has paid instalments up to November, 2004.

5. Further it is stated in reply to para 2 of the writ affidavit that the bank is not agreeable to any one-time settlement and further the petitioner after addressing a letter dated 13.3.2007 never turned up personally to the bank for liquidation of loan amounts in spite of repeated telephonic requests and no one time settlement proposal was accepted by this respondent bank as alleged by the petitioner. In reply to para 3 of the writ affidavit, it is true that he has availed an amount of Rs.9,80,000/- for the purpose of purchasing the property viz. all that residential flat admeasuring 925 sq.ft on first floor bearing flat No.102 in the complex known as 'Ramya Enclave' and created an equitable mortgage on the said property on 14.5.2004 under Housing Loan Account No.ML 240017. Further, the petitioner misleading the Hon'ble court by way of submitting false information as the monthly installment payable by the petitioner is Rs.9,000/- instead of Rs.9702/- per month for a period of 15 years and it is also not true that he had paid Rs.10,00,000/- to the respondent bank for liquidation of loan amount as alleged by him and so far he has paid only an amount of Rs.29,810/- and the last installment paid by him to the respondent is in respect of November, 2004 in the month of October, 2005 out of the total installments numbering to 180. It is also further stated in reply to

para 4 of the writ affidavit, that the petitioner never informed this respondent bank that he was suddenly fell ill and could not run his business resulting which he sustained huge loss and which caused to commit default in repayment of monthly installments except by way of a letter dated 13.3.2007, which was received by the respondent bank on 16.3.2007. However, it shows that the petitioner is a wilful defaulter since the date of availing the loan, he has remitted only Rs.29,810/- against the agreed monthly installment of Rs.9,702/- per month. The petitioner never came forward to pay the monthly installment or to close the housing loan account till today. The very statement given by him that he has got money by sale of his lands evidences that he is a willful defaulter since he is not repaying the loan despite of having sufficient funds and source and further installment from December, 2004 are not paid so far. Even after filing of this writ petition, he has not paid any amounts. It is also stated that the petitioner's story of approaching this respondent by way of procuring necessary amounts from his friends, relatives and for submission of his application on 13.3.2007 by showing his readiness to pay the lump-sum under one time settlement is concocted since, the letter dated 13.3.2007 sent by petitioner is subsequent to the auction notice dated 26.2.2007 issued by the bank. It is stated that the petitioner being willful defaulter, just to stall the auction and postpone the repayment of loan has malafidely issued the above letter dated 13.3.2007 on noticing the sale/auction notification issued by the respondent bank in Prajashakthi Newspaper on 26.2.2007 and to drag on the matter by way of not paying monthly installments. Further the question of this bank accepting one time settlement does not arise in view of the facts that already sale notification was issued. The petitioner is not entitled for one time settlement. Further it is stated that he was informed over telephone several times. However, in spite of several telephonic requests, the petitioner had not turned up for liquidating the loan amounts and being a wilful defaulter, he approached this court to get the sale/auction to be

dealt and to drag on the matter not being the monthly instalments or repaying the amount. Hence, it is stated that the writ petition may be dismissed.

6. It is no doubt true that in the light of the respective stands taken by the parties, the further proceedings, which are being taken by the respondent, cannot be found fault in any way. However, a representation is made before this court on behalf of the writ petitioner that the writ petitioner is ready and willing to discharge the complete loan amount. It is needless to say that it is for the respondent-bank to take a decision in this regard. It is also stated that a representation of the petitioner, dated 13.3.2007, for settling the loan amount under one time settlement scheme is pending with the respondent-bank. It is stated that the respondent- banking institution is in agreeable to one time settlement scheme. However, in view of the facts and circumstances, especially in the light of the representation of the petitioner, dated 13.3.2007, and also the stand taken by the writ petitioner that he is prepared to discharge the total loan amount at a time, it is for the respondent- banking institution to take appropriate decision in this regard. Let the respondent- banking institution take a decision in this regard and further proceed with the matter in accordance with law.

7. With the above direction, the writ petition is disposed of. No order as to costs.

P.S.NARAYANA,J

26th October, 2006.

PNV

Note: CC in three days.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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